

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5893 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARESH I PARMAR

Versus

ONGC,CO.SP WAHI OR HIS SUCCESSOR IN OFFICE

Appearance:

MR Prabhakar Upadhyay, advocate for Petitioners
MR RAJNI H MEHTA for Respondent No. 1
RULE SERVED for Respondent No. 2, 5
MR JD AJMERA for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/09/98

ORAL JUDGEMENT

By means of this petition, the petitioners have prayed for a direction to the respondent ONGC to absorb them and regularise their services from the date of their respective appointments and to pay them

all consequential benefits such as continuity of service etc. and for a further direction to pay the salary calculating at par with the permanent class IV employees on the basis of principle of equal pay for equal work and declaring the petitioners in continuous service by holding that the purported action of the department to terminate services of the petitioners is illegal, unconstitutional, null and void. It is alleged that the petitioners' services had been terminated with effect from 1.9.88 though they have worked for more than 240 days. Hence, they were entitled to the benefits of Sections 25(F) and 25(N) of the Industrial Disputes Act, 1947. It is alleged that the petitioners had been continuously rendering services with the respondent Commission and the Commission had direct control on the petitioners. They were paid salaries on daily rated basis at Rs.19.40 ps. except the petitioner no.10 who was getting Rs.21/- per day. They came to know that they were not employees of the respondent Commission, but they were employees of the contractor Modern Multipurpose Co.Op. society and the term of the contractor had expired on 15.8.88. Thereafter, the contract was given to respondent no. 5 from 16.8.88. It is also stated that the petitioner nos.1,2 and 3 were directly recruited by the Commission authority by a letter and they have been shown to be direct employees through contractor, namely Modern Multi-purpose Co-operative society. Therefore, the respondent no.5 had no power or authority under law to terminate the services of the petitioners. The work of the petitioners was of permanent nature being taken through contractor. Whenever the Commission required the services of the class IV employees, they were supplied by the contractor.

2. The learned advocate for the petitioners contended that the contractor had no licence or licence of the contractor was not registered to supply class IV employees to the respondent Commission. If the contractor had no licence he could not have worked and if they were not the contractors' workmen, the petitioners will be deemed to be the employees of the respondent Commission. In support of his arguments, the learned advocate for the petitioners relied on the judgments of the Madras High Court reported in 1985(1) LLJ, 492; 1987(1) LLJ, 492, Karnataka High Court, 407, AIR 1997, SC, 645, Supreme Court and 1998(2) CLR, Allahabad High Court. The case of Delhi Multistoreyed Building Employees Congress vs. Union of India and others reported in 1998(2) CLR, 343 shows that different categories of workmen mentioned in the notification, there is a Government Notification dated September 8, 1994

which was given effect from April, 1997 whereby ONGC was directed to determine the complements of different categories of workmen mentioned in the notification dated September 8, 1994. Such number of workmen from amongst the persons contractual workmen determined as the required complement were directed to be absorbed as regular workmen in the employment of ONGC and those workmen were extended all emoluments and conditions of services as are applicable to the workmen of corresponding department in the establishment of ONGC. If any workmen are found surplus to the requirement in any category, the ONGC was directed to discharge such workmen after complying with the provisions of Chapter VB of the Industrial Disputes Act, 1947.

3. Thus, the services of the petitioners could not be regularised with effect from 1.4.97 unless it is determined that they were being supplied by the contractor throughout till that date. The learned counsel for the petitioners also submitted that the petitioners were employees of the respondent Commission and they were not engaged by the contractor and he relied on certain temporary identity card issued to the petitioners and attendance registers on the prescribed registers to be maintained by ONGC. The appointment letter dated 11.11.91 only for a period of three months with effect from 11.11.91 to 8.2.91. So far as the identity cards are concerned, they were issued by the respondent Commission only to enter in the premises of the respondent Corporation. Regarding attendance register, the learned advocate for the respondent Commission has submitted that the copy of the attendance register produced by the petitioners for the month of October, 1987 and June, 1988 were maintained by the office of the Commission only to have a report for administrative purposes for checking by the contractor Modern Multipurpose Co.Op. Society. Thus, it was the register of ONGC commission for maintaining the attendance of the workmen not dealing with them as employees of the respondent Commission. So far as the appointment letter dated 11.11.91 is concerned, the learned counsel for the respondents pointed out that a writ petition was filed in the year 1988 and this is subsequent to the filing of the said writ petition. Moreover, it was only for a period of three months as casual labourers.

4. From the contentions advanced on behalf of the parties, it appears that there are certain disputed questions of fact which cannot be decided by this Court and this Court cannot decide whether the petitioners were

supplied by the contractor or they were directly recruited by the Commission and how far their services remained continued and whether they are entitled to the benefit of Government Notification dated September 8,1994. All these disputed questions can be decided only by leading necessary evidence. In the present case, the respondent Commission has also made it clear that the petitioners were labourers of Modern Multipurpose Co-operative Society working in the Reservoir section and the contract was upto 16.8.88 which was extended upto 30.8.88. It was also denied that any contract had been entered with the respondent no.5 and therefore,the petitioners have not worked after 30.8.88.

5. In view of the above disputed questions of facts, this Court is unable to exercise its extraordinary jurisdiction under Article 226 of the Constitution to direct the respondent Commission to absorb or regularise the petitioners on the work-charged muster-roll.

6. Thus, this petition has no merits and accordingly it is hereby dismissed with no order as to costs. However, the petitioners are at liberty to move appropriate authority for getting their grievances redressed. If the petitioners move the appropriate authority for redressal of their grievances, within a period of one month from the date of this judgment, if they so desire, the authority concerned is directed to decide and dispose of the claims and grievances of the petitioners in accordance with law, as expeditiously as possible and preferably within a period of six months. Rule is made absolute accordingly with no order as to costs.

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